

PATRICIA P. MARKS

IBLA 78-47

Decided May 2, 1978

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, dated September 20, 1977, rejecting a successful offer in a public oil and gas lease drawing NM 30042.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

Where an entry card in a public drawing is signed by the offeror but completed by an agent or attorney-in-fact, the separate signed statements by the attorney-in-fact or agent required by the pertinent regulation, 43 CFR 3102.6-1(a)(2), need not be filed.

2. Oil and Gas Leases: Applications: Generally

Where a drawing entry card submitted in a simultaneous oil and gas lease filing has been signed by the applicant, its completion by a duly authorized agent, all else being regular, does not call into play other requirements of pertinent regulations.

APPEARANCES: Douglas V. Johnson, Esq., Davis, Graham & Stubbs, Denver, Colorado.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Patricia P. Marks appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated September 20, 1977, rejecting her oil and gas lease offer, NM 30042. Appellant was determined to be the successful applicant for a lease for parcel NM 454 at a public drawing on March 10, 1977, held pursuant to 43 CFR Subpart 3112.

On August 2, 1977, the State Office, noting that the address in her drawing entry card was one used by other applicants, requested her to submit certain information on a form concerning the circumstances under which the offer was formulated. Appellant completed the form and submitted an affidavit. She stated that the address on the drawing entry card (DEC) was that of the Rocky Mountain Land Service, Inc. (Service), that the parcel had been selected by her husband and the Service, that she had signed the card after the offer was formulated, and that it had been dated by the Service after the offer was formulated.

In her affidavit she said that she had no written contract with the Service, but that under a verbal agreement it advises her of parcels of Federal land being offered, that she uses the Service's address for convenience, that she relies on her husband's advice, and that she never had any agreement with the Service that it was to receive any present or prospective interest in a lease if one is issued to her.

The State Office rejected her offer on the grounds that:

From the information on the statement filed we have established that the offeror has given Rocky Mountain Land Service (working jointly) the discretionary authority to formulate offers in her name. In so doing, an agent or attorney-in-fact relationship has been created and compliance with 43 CFR 3102.6-1 is required. The drawing entry card contains instructions which provide that "Compliance must also be made with provisions of 43 CFR 3102." Part 3102 defines the qualifications of lessees and 3102.6 sets forth the statements and evidence required when an attorney-in-fact formulates an offer on behalf of the applicant.

Under 30 U.S.C. 226 (1970), the department has no authority to issue a noncompetitive oil and gas lease to anyone other than the first qualified applicant. If a drawing entry card is formulated by an agent or attorney-in-fact in behalf of the applicant, the offer cannot be considered to have been submitted by a qualified applicant unless it is accompanied by the statement required by 43 CFR 3102.6-1.

[1] 43 CFR 3102.6-1(a)(2), upon which BLM relies, provides:

(2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person,

either oral or written, by which the attorneys in fact or agent or such other person has received or is to receive any interest in the lease when issued including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one *
* *. [Emphasis added.]

In several recent decisions the Board has held that, in the absence of a finding that the Service, rather than appellant, had signed appellant's name to the DEC, the State Office's rationale was inapplicable. Adam F. Zbelski, 34 IBLA 4 (1978); Virginia A. Rapozo, 33 IBLA 344 (1978).

Those cases held that where an entry card in a public drawing is signed by the offeror but completed by an agent or attorney-in-fact, the separate signed statements required by the cited regulation need not be filed.

[2] Nor do grounds for rejection lie in the fact that appellant signed an uncompleted form, i.e., undated, which was then completed by the Service. Where the entry card has been signed by the applicant, its completion by a duly authorized agent, all else being regular, does not call into play the other provisions of the regulation. Rapozo, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded for further proceedings consistent herewith.

Martin Ritvo
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge.

